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An Examination of Pennsylvania's Treatment of Telecommunications Towers for the Purpose of Real Property Taxation

Bradley N. Sprout*

I. Introduction

The cellular telecommunications industry has been experiencing rapid growth since the beginning of the 1990's.¹ In 1990, the industry employed approximately 21,000 workers, had over 5 million cellular subscribers, and received \$4.5 billion in revenue from its cellular services.² By 2002, the industry employed over 190,000 workers, had over 140 million cellular subscribers, and received over \$76 billion in revenue from its cellular services.³

Integral to the daily operations of the cellular telecommunications industry are the over 139,000 cell sites⁴ that are located across the United States.⁵ Each of these cell sites contains a telecommunications tower, antennas, and other radio equipment used in transmitting signals to, and receiving signals from, cellular devices.⁶ These towers, along with the tower facilities, are not owned by cellular telecommunications companies, but rather by companies in the telecommunications tower industry.⁷

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1. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE U.S., 2003, at 732 tbl.1150 (2003).

2. *Id.*

3. *Id.*

4. *Id.*

5. See Marshall Brain & Jeff Tyson, *How Cell Phones Work*, HOWSTUFFWORKS, <http://www.howstuffworks.com/cell-phone.htm> (last visited Sept. 1, 2005). Cell sites are also known as "base stations" and "tower facilities." See *id.*; *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 534 (Ct. Com. Pl. Cumberland County 2004).

6. Brain & Tyson, *supra* note 5.

7. See *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 534-37.

In Pennsylvania, an important question that has been raised about telecommunications towers is whether these towers are subject to real property taxation.⁸ Between October 2003 and September 2004, Pennsylvania common pleas courts in Cumberland, Dauphin, and Venango counties attempted to answer this question, holding, albeit for different reasons in each case, that telecommunications towers are subject to real property taxation.⁹ In February of 2005, the Commonwealth Court of Pennsylvania agreed with the common pleas courts in their final result, holding that telecommunications towers are subject to real property taxation.¹⁰ These court decisions could result in a significant legal and financial burden for the tower industry, possibly resulting in tower companies having to pay millions of dollars a year in real property taxes.¹¹

This comment examines Pennsylvania's treatment of telecommunications towers with respect to real property taxation. Part II reviews Pennsylvania's law concerning real property taxation and summarizes common pleas courts' rulings on whether telecommunications towers are subject to real property taxation.¹² Part II also gives a brief description of telecommunications towers and tower facilities. Part III analyzes whether, under Pennsylvania law, telecommunications towers should be subject to real property taxation. Part III also examines, for comparative purposes, New York's treatment of telecommunications towers. Finally, Part IV offers a suggestion as to how Pennsylvania could reform its law to further clarify whether telecommunications towers are subject to real property taxation.

8. See Matt Miller, *Cell Phone Towers Can Be Taxed, Judge Rules*, PATRIOT-NEWS (Harrisburg), Sept. 17, 2004, at B1, available at 2004 WL 57770791.

9. *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 548; *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 140, 148 (Ct. Com. Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005); *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620, slip op. at 5 (Ct. Com. Pl. Venango County Oct. 8, 2003).

10. *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 869 A.2d 562, 569 (Pa. Commw. Ct. 2005). While this case affirmed the holding of the Dauphin County Court of Common Pleas, the Commonwealth Court's analysis in reaching its holding was more akin to the analysis used by the Cumberland County Court of Common Pleas in holding that telecommunications towers are subject to real property taxation. Compare *Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 566-69, with *infra* notes 71-81 and accompanying text.

11. Miller, *supra* note 8, at B1.

12. Although the Commonwealth Court has ruled on whether telecommunications towers are subject to real estate taxation, Part II will limit its review to the common pleas courts' decisions in order to present the full array of ways in which the courts have dealt with the issue of taxation of telecommunications towers. Discussion of the Commonwealth Court's decision will be reserved for analyzing the proper treatment of telecommunications towers with respect to real property taxation in Part III.

II. Background

A. *The Law Concerning the Assessment of Real Property Taxes in Pennsylvania*

In Pennsylvania, real property is subject to taxation under title 72, section 5020-201 of the Pennsylvania Statutes Annotated.¹³ Section 5020-201 enumerates a number of items—such as houses, buildings, and lots of land—that are traditionally defined as real property and subject to real property taxation.¹⁴ However, chattels, which are commonly defined as “tangible, movable personal property[,]”¹⁵ are not enumerated as items subject to real property taxation.¹⁶ Nevertheless, section 5020-201 includes a catch-all provision stating that “all other real estate not exempt by law from taxation” is also subject to real property taxation.¹⁷ Therefore, under the catch-all provision of section 5020-201, chattels used in association with real property may be classified as fixtures¹⁸ of

13. 72 PA. STAT. ANN. § 5020-201 (West Supp. 2004). Section 5020-201 provides in pertinent part:

The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:

(a) All real estate, to wit: Houses, house trailers and mobilehomes buildings permanently attached to land or connected with water, gas, electric or sewage facilities, buildings, lands, lots of ground and ground rents, trailer parks and parking lots, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, all office type construction of whatever kind, that portion of a steel, lead, aluminum or like melting and continuous casting structures which enclose, provide shelter or protection from the elements for the various machinery, tools, appliances, equipment, materials or products involved in the mill, mine, manufactory or industrial process, *and all other real estate not exempt by law from taxation.*

Id. (emphasis added). In reality, the assessment of real property in fourth to eighth class counties is governed by title 72, section 5453-201 of the Pennsylvania Statutes Annotated. *See id.* § 5453-201. However, because section 5020-201 and section 5453-201 are almost identical in their language, application, and effect, this comment will refer only to section 5020-201 (the General County Assessment Law). *Compare id.* § 5020-201, *with id.* § 5453-201.

14. *Id.* § 5020-201. Items traditionally defined as real property include “[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.” BLACK’S LAW DICTIONARY 1234 (7th ed. 1999).

15. 6 RACHEL M. KANE, SUMMARY OF PENNSYLVANIA JURISPRUDENCE § 3:6 (2d ed. 2000).

16. *See* 72 PA. STAT. ANN. § 5020-201; *see also* 27 JOSEPH C. BRIGHT, SUMMARY OF PENNSYLVANIA JURISPRUDENCE § 15:7 (2d ed. 1998).

17. 72 PA. STAT. ANN. § 5020-201.

18. A fixture is defined as “an article in the nature of personal property which has been so annexed to the realty that it is regarded as part and parcel of the land.” *Gore v.*

real property, thus subjecting them to real property taxation.¹⁹

Pennsylvania courts have developed a test to determine whether chattels used in association with real property have become fixtures of real property.²⁰ This test examines the physical connection between the chattel and the real property with which it is associated to determine whether the chattel is so affixed to the real property that the chattel can actually be considered part of the real property.²¹

In *Clayton v. Lienhard*, the Supreme Court of Pennsylvania announced a test that divides chattels into three categories based upon their physical connection to the real property with which they are associated.²² The first category of chattels includes ones "which are manifestly furniture, . . . and not peculiarly fitted to the property with which they are used[.]"²³ Chattels in this category are considered personalty and are not subject to real property taxes.²⁴ The second category of chattels includes ones that are affixed to the real property in a manner that does not allow them to be removed "without material injury to the real estate or to themselves[.]"²⁵ Chattels in this category are considered realty, and thus fixtures, regardless of whether their owners intended them to become part of the real property.²⁶ The third category of chattels includes chattels which are affixed to the real property in a manner that allows them to be removed "without destroying or materially injuring the chattels themselves, or the property to which they are annexed[.]"²⁷ Whether chattels in this category are considered personalty or realty is dependent upon whether their owners intended them to become fixtures when the chattels were attached to the real property.²⁸

The Commonwealth Court of Pennsylvania has added a gloss to the third *Clayton* category of chattels, setting forth three factors (the

Bethlehem Area Sch. Dist., 537 A.2d 913, 915 (Pa. Commw. Ct. 1988). See also BLACK'S LAW DICTIONARY 652 (7th ed. 1999) (defining a fixture as "[p]ersonal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home.").

19. See 72 PA. STAT. ANN. § 5020-201; *In re Sheetz, Inc.*, 657 A.2d 1011, 1014 (Pa. Commw. Ct. 1995) (holding that removable canopies over gasoline pumps are fixtures of the gasoline station, and thus are subject to real property taxation); see also 27 BRIGHT, *supra* note 16, § 15:7.

20. See *Clayton v. Lienhard*, 167 A. 321, 322 (Pa. 1933); *In re Sheetz, Inc.*, 657 A.2d at 1013-14; *Gore*, 537 A.2d at 915.

21. See cases cited *supra* note 20.

22. *Clayton*, 167 A. at 322.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Clayton v. Lienhard*, 167 A. 321, 322 (Pa. 1933).

Gore/Sheetz factors) to aid in determining whether a chattel has become a fixture of real property.²⁹ The first factor taken into consideration is the manner in which the chattel is attached to the real property.³⁰ This factor involves an inquiry into both the damage which would result from, as well as the effort which must be put forth in, the removal of a chattel from the real property.³¹ However, a lack of resulting damage, or a lack of difficulty in removing the chattel, does not preclude the chattel from being deemed a fixture.³² The second factor taken into consideration is whether the chattel is essential to the use of the real property to which it is attached.³³ Finally, the third factor taken into consideration is whether the party attaching the chattel to the real property intended the chattel to become a permanent fixture of the real property.³⁴

The third *Gore/Sheetz* factor is the factor that is afforded the most weight in determining whether a chattel has become a fixture.³⁵ In fact, the first two factors are regarded as evidence as to whether a party intended the chattel to become a permanent fixture of the real property.³⁶ Furthermore, permanence is defined as the chattel being affixed to the real property until the chattel is "worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose."³⁷

Nevertheless, even chattels that could be considered permanent fixtures of real property may be excluded from real property taxation.³⁸ Section 5020-201, under its industrial establishment exception, enumerates a group of chattels which are exempt from real property taxation, namely "[m]achinery, tools, appliances and other equipment contained in any mill, mine, manufactory or industrial establishment[.]"³⁹

In order for a fixture to be excluded under the industrial establishment exception, several requirements must be met.⁴⁰ First, the

29. See *In re Sheetz, Inc.*, 657 A.2d 1011, 1013-14 (Pa. Commw. Ct. 1995); *Gore v. Bethlehem Area Sch. Dist.*, 537 A.2d 913, 915 (Pa. Commw. Ct. 1988). The *Gore/Sheetz* factors were first set forth in *Gore*, see 537 A.2d at 915, and were then elaborated upon in *In re Sheetz, Inc.*, see 657 A.2d at 1013-14.

30. *In re Sheetz, Inc.*, 657 A.2d at 1013; *Gore*, 537 A.2d at 915.

31. *In re Sheetz, Inc.*, 657 A.2d at 1013-14.

32. *Id.*

33. *Id.* at 1014; *Gore*, 537 A.2d at 915.

34. *In re Sheetz, Inc.*, 657 A.2d at 1014; *Gore*, 537 A.2d at 915.

35. *In re Sheetz, Inc.*, 657 A.2d at 1014.

36. *Id.*

37. *Id.* (quoting *Michigan Nat'l Bank v. City of Lansing*, 293 N.W.2d 626, 627 (Mich. Ct. App. 1980)).

38. See, e.g., *City of Pittsburgh v. WIIC-TV Corp.*, 321 A.2d 387, 387 (Pa. Commw. Ct. 1974).

39. 72 PA. STAT. ANN. § 5020-201 (West Supp. 2004).

40. See *In re Borough of Aliquippa*, 175 A.2d 856, 861-62 (Pa. 1961); *City of Pittsburgh*, 321 A.2d at 388.

fixtures in question must be either contained within, or attached to, a facility that is considered an industrial establishment.⁴¹ If the facility that the fixtures are contained within or attached to is not considered an industrial establishment, then the fixtures are not excluded from real property taxation.⁴² In deciding whether a facility is an industrial establishment, courts look to whether or not the ordinary man would consider the structure an industrial establishment, construing any doubt in favor of the taxpayer.⁴³

If the facility where the fixtures are located is considered an industrial establishment, then the court must consider whether or not the fixtures "are [1] used *directly* in manufacturing the products that the establishment is intended to produce and [2] are necessary and integral parts of the manufacturing process and [3] are used *solely* for effectuating that purpose[.]"⁴⁴ If the fixtures meet these three requirements, they are excluded from real property taxation under section 5020-201's industrial establishment exception.⁴⁵ However, if the fixtures fail to satisfy even one of the above requirements, they then are deemed taxable as real property under section 5020-201.⁴⁶

B. Telecommunications Towers—An Overview of Their Purpose, Characteristics, Erection, and Disassembly

There are three main types of telecommunications towers: monopole towers (cylindrical, self-supporting towers); guyed towers (three- or four-legged towers which are supported by guy wires); and self-supporting or lattice towers (three- or four-legged towers which are supported solely by their legs).⁴⁷ These towers are part of a larger tower facility, which normally includes the tower itself, a concrete pad/foundation, antennas, equipment shelters, coaxial cables, electrical generators, and fencing.⁴⁸ Telecommunications towers are integral parts

41. See *City of Pittsburgh*, 321 A.2d at 387-88.

42. See *id.*

43. *Id.* at 388 (citing *Messenger Publ'g Co. v. Bd. of Prop. Assessment, Appeals & Review*, 132 A.2d 768, 769 (Pa. Super. Ct. 1957)).

44. *In re Borough of Aliquippa*, 175 A.2d at 861.

45. See *id.* at 861-62.

46. See, e.g., *In re W. Penn Power Co.*, 588 A.2d 997, 1000 (Pa. Commw. Ct. 1991) (holding that oil storage tanks located at a power plant—an industrial establishment—were not excluded from real property taxation under section 5020-201 because their primary purpose was for storage, and not the manufacturing of power at the facility).

47. OFFICE OF REAL PROP. SERV., THE VALUATION OF TOWERS AND ASSOCIATED REAL PROPERTY 4-6 (2001), available at <http://www.orps.state.ny.us/sas/valuation/index.cfm> (last visited Sept. 1, 2005).

48. See *id.* at 6-9; see also *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 534 (Ct. Com. Pl. Cumberland County 2004); *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620,

of tower facilities because they host the antennas that are used to transmit signals to and receive signals from cellular devices.⁴⁹ The land that these tower facilities occupy is generally leased by the tower companies for extended periods of time, with many leases having the potential to last over twenty years.⁵⁰

The erection of a telecommunications tower begins with the clearing of the tower site and the creation of an access road.⁵¹ After the site has been cleared, part of the land is excavated for the concrete foundation, and rebar cages, which contain the bolts to which the tower will be attached, are placed in the ground.⁵² The concrete foundation is then poured, leaving only the bolts protruding from the foundation.⁵³

Because telecommunications towers are brought to tower sites in various pieces, the towers must be assembled at the tower site.⁵⁴ The assembly begins by having a crane place the bottom section of the tower on the bolts that are protruding from the concrete foundation.⁵⁵ The bottom section is then secured to the concrete foundation by a lock washer and nut.⁵⁶ After the first section has been secured, the crane continues to lift the remaining sections into place, and riggers continue to bolt these sections to the rest of the assembled tower.⁵⁷ Once the tower has been assembled, the necessary electrical connections can be made, and the tower can begin hosting antennas.⁵⁸

There are also times when telecommunications towers need to be disassembled.⁵⁹ For instance, tower companies sometimes erect towers in anticipation of cellular telecommunications companies needing to rent antenna space in particular areas.⁶⁰ If the cellular telecommunications

slip op. at 1 (Ct. Com. Pl. Venango County Oct. 8, 2003).

49. See Brain & Tyson, *supra* note 5.

50. See *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 534-37; *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 140, 146 (Ct. Com. Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005).

51. *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 538.

52. *Id.* at 539.

53. *Id.* The court noted that instead of the larger concrete foundation, towers with legs may have concrete caissons underneath each leg, which are the equivalent of small concrete foundations. *Id.*

54. See *id.* at 540.

55. *Id.*

56. *Id.*

57. *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 540-41 (Ct. Com. Pl. Cumberland County 2004). Once all the sections are bolted together, these towers may range anywhere from under 50 feet in height (for small monopole towers) to over 1,000 feet in height (for large lattice towers). *Id.* at 534.

58. *Id.* at 540.

59. *Id.* at 543-44.

60. *Id.*

companies never rent the antenna space, the towers may be moved to more profitable locations.⁶¹ Conversely, if cellular telecommunications companies are renting antenna space on a tower, but the tower is no longer of sufficient height to accommodate the companies' needs, then the old tower may be replaced by a taller tower.⁶² Finally, towers may be relocated in accordance with population shifts so that the towers, and, more importantly, the attached antennas, can better serve denser population areas.⁶³

Disassembling telecommunications towers, in essence, requires a reversing of the process for assembling them.⁶⁴ Before disassembly of the tower begins, all antennas and cables must be removed.⁶⁵ Riggers then ascend the tower and begin unfastening the tower's various sections, which are lowered to the ground by a crane.⁶⁶ This process continues until the bottom section of the tower is unbolted from the concrete foundation.⁶⁷

Generally, unless the landowner demands their removal, the equipment shelter, concrete foundation, and fence surrounding the tower facility are left at the site.⁶⁸ Therefore, if a tower company decides to erect another telecommunications tower at the same location at some point in the future, or if the company is simply replacing an old tower with a taller tower, the equipment shelter, concrete foundation, and fence can be reused.⁶⁹ Similarly, except for the bolts that hold the tower sections together, all the other parts of a disassembled tower may be reused at another tower facility as long as they are not damaged during disassembly or worn out from prolonged use.⁷⁰

C. Common Pleas Courts' Treatment of Telecommunications Towers for the Purpose of Real Property Taxation

A number of common pleas courts have ruled on various aspects of this issue.⁷¹ In both *Shenandoah Mobile Company v. Cumberland*

61. *Id.*

62. *Id.* at 543. The procedure of replacing a tower that is no longer of sufficient height with a taller tower is known in the industry as a "drop and swap." *Id.*

63. *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 543 (Ct. Com. Pl. Cumberland County 2004).

64. *See id.* at 540-41.

65. *Id.*

66. *Id.* at 541.

67. *Id.*

68. *Id.* at 542.

69. *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 542 (Ct. Com. Pl. Cumberland County 2004).

70. *Id.* at 543.

71. *See id.* at 548; *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment*

County Board of Assessment Appeals and Shenandoah Mobile Company v. Dauphin County Board of Assessment Appeals, the courts held that telecommunications towers are fixtures of tower facilities, and therefore, realty.⁷² Furthermore both courts held that these towers, as fixtures of tower facilities, are subject to real property taxation.⁷³ However, the two courts did not agree as to why the towers should be classified as fixtures.⁷⁴

In *Dauphin County Board of Assessment Appeals*, the court held that telecommunications towers fall under the second *Clayton* category.⁷⁵ The court reasoned that although towers can be removed from their concrete foundations without causing material injury to either the towers or the foundations, the foundations themselves cannot be removed from the ground without materially injuring the surrounding real estate.⁷⁶ Therefore, the court held that towers should be considered fixtures of tower facilities, thus subjecting towers to real property taxation.⁷⁷

In contrast, the court in *Cumberland County Board of Assessment Appeals* held that telecommunications towers fall under the third *Clayton* category.⁷⁸ The court reasoned that towers can be removed from their foundations without causing material injury to either the towers or the foundations.⁷⁹ However, the court also reasoned that towers are essential to the use of tower facilities, and that tower companies intend for towers to become permanent fixtures of tower facilities.⁸⁰ Therefore, although for different reasons than the court in *Dauphin County Board of Assessment Appeals*, the court also held that towers are fixtures, thus

Appeals, 68 D. & C.4th 140, 148 (Ct. Com. Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005); *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620, slip op. at 5 (Ct. Com. Pl. Venango County Oct. 8, 2003).

72. *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 148; *Dauphin County Bd. of Assessment Appeals*, 68 D. & C.4th at 147-48.

73. See cases cited *supra* note 72.

74. Compare *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 148, with *Dauphin County Bd. of Assessment Appeals*, 68 D. & C.4th at 147-48.

75. *Dauphin County Bd. of Assessment Appeals*, 68 D. & C.4th at 147.

76. *Id.*

77. *Id.* at 147-48.

78. See *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 548. While the court did not specifically state that telecommunications towers fell into the third *Clayton* category, the court did apply the test used by the court in *In re Sheetz, Inc.*, to determine whether a chattel was intended by the parties to become a fixture of real property. *Id.* Because this test is used by the courts to determine whether a chattel has become a fixture of real property under the third *Clayton* category, it is fair to assume the court in this case believed the telecommunications towers fell into the third *Clayton* category. See *In re Sheetz, Inc.*, 657 A.2d 1011, 1013-14 (Pa. Commw. Ct. 1995); *Gore v. Bethlehem Area Sch. Dist.*, 537 A.2d 913, 915 (Pa. Commw. Ct. 1988).

79. *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 548.

80. *Id.*

subjecting them to real property taxation.⁸¹

In addition to addressing the issue of whether telecommunications towers are fixtures, and thus subject to real property taxation, Pennsylvania common pleas courts have also addressed the issue of whether telecommunications towers are excluded from real property taxation under section 5020-201's industrial establishment exception.⁸² In *SBA Towers v. Venango County Board of Assessment Appeals*, the court held that towers are not excluded from real property taxation under section 5020-201's industrial establishment exception.⁸³ The court held that telecommunications towers, and tower facilities in general, are not used to produce a tangible product; instead, they are simply used for transferring and receiving signals to and from cellular devices.⁸⁴ Because towers and tower facilities are not used in producing a tangible product, the court held that towers could not be excluded from real property taxation under the industrial establishment exception of section 5020-201.⁸⁵

III. Analysis

A. *The Classification of Telecommunications Towers as Fixtures for the Purpose of Real Property Taxation*

Telecommunications towers are not specifically listed as types of realty that are subject to real property taxation under section 5020-201 of the Pennsylvania Statutes Annotated.⁸⁶ In fact, telecommunications towers are actually chattels, or personalty.⁸⁷ Chattels are generally not subject to real property taxation under section 5020-201 unless they are classified as fixtures, thus allowing them to fall under section 5020-201's catch-all provision.⁸⁸ Therefore, it is necessary to determine whether telecommunications towers can be classified as fixtures, thus subjecting them to real property taxation under section 5020-201.

81. Compare *id.*, with *Dauphin County Bd. of Assessment Appeals*, 68 D. & C.4th at 147-48.

82. See *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620, slip op. at 4-5 (Ct. Com. Pl. Venango County Oct. 8, 2003).

83. *Id.* at 5.

84. *Id.* at 4.

85. *Id.* at 4-5.

86. See 72 PA. STAT. ANN. § 5020-201 (West Supp. 2004).

87. See *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th 529, 540-42 (Ct. Com. Pl. Cumberland County 2004) (describing towers as moveable pieces of property); 6 KANE, *supra* note 15, § 3:6.

88. See sources cited *supra* note 19.

1. Telecommunications Towers Fall Under the *Clayton* Test's Third Category of Chattels Used in Conjunction with Real Property

Under the *Clayton* test, chattels used in conjunction with real property are divided into three categories.⁸⁹ However, only those chattels which fall into the second or third *Clayton* categories can be classified as fixtures.⁹⁰ In order to determine in which *Clayton* category telecommunications towers properly belong, it will be helpful to consider not only the characteristics of these towers, but also the characteristics of other chattels which courts have previously placed into each category.⁹¹

The first *Clayton* category encompasses chattels that are not attached to the property they are used in conjunction with; in other words, chattels that are "manifestly furniture[.]"⁹² Courts have placed chattels such as moveable bleachers located at a concert facility and picnic tables sitting inside an open pavilion in this category.⁹³ For both of these specific chattels, the courts supported their classifications by reasoning that the moveable bleachers and the picnic tables were not attached to the real property with which they were being used.⁹⁴ Because physical attachment to real property is a prerequisite for placing a chattel in either the second or third *Clayton* category, the only *Clayton* category left for these chattels was the first.⁹⁵

Unlike the moveable bleachers and picnic tables, telecommunications towers are physically attached to the tower facilities that they are used in conjunction with.⁹⁶ In fact, towers are securely

89. *Clayton v. Lienhard*, 167 A. 321, 322 (Pa. 1933).

90. *See id.*

91. In affirming the common pleas court's decision, the Commonwealth Court placed telecommunications towers in the third *Clayton* category without providing any rationale for this categorization, even though the common pleas court had held that telecommunications towers belong in the second *Clayton* category. *See Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 869 A.2d 562, 566-67 (Pa. Commw. Ct. 2005); *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 140, 147 (Ct. Com. Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005).

92. *Clayton*, 167 A. at 322.

93. *See Blocker v. City of Philadelphia*, 763 A.2d 373, 375 (Pa. 2000) (holding that moveable bleachers used at a concert facility were not fixtures); *Kniaz v. Benton Borough*, 48 Pa. D. & C.3d 36, 41-42 (Ct. Com. Pl. Columbia County 1986) (holding that a picnic table that was unattached to the pavilion in which it was sitting was not a fixture), *aff'd*, 535 A.2d 308 (Pa. Commw. Ct. 1988).

94. *Blocker*, 763 A.2d at 375; *Kniaz*, 48 Pa. D. & C.3d at 41-42.

95. *See Clayton*, 167 A. at 322; *Blocker*, 763 A.2d at 375; *Kniaz*, 48 Pa. D. & C.3d at 40.

96. *Compare Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 548 (Ct. Com. Pl. Cumberland County 2004), *with Blocker*, 763 A.2d at 375, and *Kniaz*, 48 Pa. D. & C.3d at 40-41.

attached to tower facilities and, more specifically, to the facilities' concrete foundations, by a number of bolts and nuts.⁹⁷ This physical attachment to the tower facilities precludes the towers from belonging to the first *Clayton* category.⁹⁸ Therefore, telecommunications towers must fall under either the second or third *Clayton* category.⁹⁹

The second *Clayton* category encompasses chattels that are not only attached to the property they are used in conjunction with, but are also unable to be removed from the property without materially injuring either the chattel or the property.¹⁰⁰ The premier example of a chattel which belongs in the second *Clayton* category is the sprinkler system discussed in *Clayton*.¹⁰¹ The sprinkler system was built into a parking garage as the parking garage was being constructed.¹⁰² The piping for the sprinkler system spanned three floors, going both underground and through the walls of the garage.¹⁰³ Any attempt to remove the sprinkler system from the garage would have resulted in serious damage to both the garage and the sprinkler system.¹⁰⁴ Thus, the court concluded that the sprinkler system was a fixture of the garage.¹⁰⁵

One Pennsylvania common pleas court has held that telecommunications towers also belong in the second *Clayton* category.¹⁰⁶ The court in *Dauphin County Board of Assessment Appeals* reasoned that "while the [tower] itself may be removable without injury, the massive concrete base . . . cannot be removed without injury to the real estate."¹⁰⁷ However, whether or not damage would result to the surrounding property from the removal of the concrete foundation is irrelevant.¹⁰⁸ Instead, when determining whether a tower falls within the second *Clayton* category, the relevant inquiry is whether the tower could be removed without injury to either the tower or the concrete foundation.¹⁰⁹

Unlike the sprinkler system in *Clayton*, telecommunications towers can be removed from tower facilities without materially damaging either

97. *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 540.

98. *See Clayton*, 167 A. at 322.

99. *See id.*

100. *Id.*

101. *See id.*

102. *Id.*

103. *Id.*

104. *Clayton v. Lienhard*, 167 A. 321, 322 (Pa. 1933).

105. *See id.* at 322-23.

106. *See Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 140, 147 (Ct. Com Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005).

107. *Id.*

108. *See Clayton*, 167 A. at 322.

109. *See id.*

the towers or the facilities.¹¹⁰ This is evident from the tower industry's practice of disassembling and relocating towers which are no longer needed in certain areas, as well as its practice of replacing towers of insufficient height with taller towers.¹¹¹ The disassembled towers can be reassembled at another tower facility, and the old tower facility can host another tower if a tower is later needed at that location.¹¹² The only parts of either the towers or the tower facilities that need replaced during these processes are the bolts which hold the tower sections together.¹¹³ In fact, the court in *Dauphin County Board of Assessment Appeals* even noted that towers could be removed from the tower facilities without causing material damage to either the towers or tower facilities.¹¹⁴

Because towers can be removed from tower facilities without materially damaging the towers or the facilities, towers do not fall under the second *Clayton* category.¹¹⁵ Therefore, as the court held in *Cumberland County Board of Assessment Appeals*, telecommunications towers fall under the third *Clayton* category—chattels that are physically attached to real property, but can be removed from the real property without materially damaging the chattel or the real property.¹¹⁶

2. Telecommunications Towers are Fixtures According to the *Gore/Sheetz* Factors

Because telecommunications towers fall under the third *Clayton* category of chattels,¹¹⁷ the *Gore/Sheetz* factors must be applied in order to determine whether telecommunications towers can be classified as fixtures.¹¹⁸ In *Cumberland County Board of Assessment Appeals*, the court, in a rather brief analysis, summarily applied the *Gore/Sheetz* factors and concluded that telecommunications towers are fixtures of real property.¹¹⁹ While the court correctly held that telecommunications

110. Compare *id.* with *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 540-42 (Ct. Com. Pl. Cumberland County 2004).

111. *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 543-44.

112. *Id.* at 542-44.

113. *Id.* at 543.

114. *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 140, 147 (Ct. Com. Pl. Dauphin County 2004), *aff'd* 869 A.2d 562 (Pa. Commw. Ct. 2005).

115. See *Clayton*, 167 A. at 322; *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 542-43.

116. See *Clayton*, 167 A. at 322; *supra* notes 78, 110-14 and accompanying text.

117. See *supra* Part III.A.1.

118. See *In re Sheetz, Inc.*, 657 A.2d 1011, 1013-14 (Pa. Commw. Ct. 1995); *Gore v. Bethlehem Area Sch. Dist.*, 537 A.2d 913, 915 (Pa. Commw. Ct. 1988).

119. See *Cumberland County Bd. of Assessment Appeals*, 68 D. & C.4th at 548. The court's application of the *Gore/Sheetz* factors to telecommunications towers consisted of

towers are fixtures, a more in-depth application of the *Gore/Sheetz* factors to telecommunications towers, as was conducted by the Commonwealth Court in *Shenandoah Mobile Company v. Dauphin County Board of Assessment Appeals*, indicates that telecommunications towers are indeed fixtures of tower facilities.¹²⁰

The first *Gore/Sheetz* factor addresses the manner in which the chattel in question is attached to the real property.¹²¹ As the Commonwealth Court reasoned, telecommunications towers, much like the canopies in *In re Sheetz*, are attached to tower facilities by placing the towers over large bolts, which are cemented into concrete foundations, and then securing the towers with lock washers and nuts.¹²² Thus, towers would seem to have “the requisite degree of ‘attachment’” necessary to deem them fixtures of tower facilities.¹²³ Furthermore, the fact that towers can be removed from the tower facilities does not preclude them from being characterized as being securely attached to the tower facilities, as securing a chattel to real property by bolts is sufficient to satisfy the requirement that the chattel be permanently attached to the real property.¹²⁴

The second *Gore/Sheetz* factor takes into consideration whether the chattel is essential to the use of the real property.¹²⁵ In considering this factor, the Commonwealth Court found that the concrete pads at tower facilities are absolutely useless if towers are not attached to them because “the concrete pad[s] are] installed solely to support the [t]ower. . . .”¹²⁶ Thus, telecommunications towers are essential to the use of tower facilities.¹²⁷

the following:

First, the towers are firmly affixed to the ground. . . . Second, the towers are essential to the use of the rest of the facility. . . .

Third, and perhaps most important, the intent of the parties that the towers be features of the real estate . . . is manifest in the extended terms of the leases and the practice of the industry. . . .

Id.

120. See *infra* notes 121-31 and accompanying text.

121. *In re Sheetz, Inc.*, 657 A.2d at 1013; *Gore*, 537 A.2d at 915.

122. See *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 869 A.2d 562, 567-68 (Pa. Commw. Ct. 2005); see also *Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th at 540.

123. See *Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 568. Other factors that influenced the Commonwealth Court’s finding that telecommunications towers are attached to tower facilities included the effort required to remove a tower and the infrequency in which towers are removed. *Id.*

124. *Id.*

125. *In re Sheetz, Inc.*, 657 A.2d at 1014; *Gore*, 537 A.2d at 915.

126. *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 568-69.

127. *Id.* at 569.

Finally, the third, and most weighty, *Gore/Sheetz* factor examines whether a party intended the chattel in question to become a permanent fixture when the party attached the chattel to the real property.¹²⁸ The Commonwealth Court noted that most leases for the land on which tower facilities are built are structured to last well over twenty years.¹²⁹ Additionally, the Commonwealth Court found that towers would only be removed from tower facilities "when business warrants it."¹³⁰ Thus, the Commonwealth Court found that tower companies' conduct demonstrated their intent to have telecommunications towers become permanent fixtures of tower facilities.¹³¹

Because telecommunications towers are essential to the use of tower facilities, permanently attached to tower facilities, and most importantly, intended by tower companies to become fixtures of tower facilities, towers are indeed fixtures of tower facilities according to the *Gore/Sheetz* factors.¹³² Furthermore, because telecommunications towers can be classified as fixtures of tower facilities, they are subject to real property taxation under section 5020-201.¹³³

B. The Effect of Section 5020-201's Industrial Establishment Exception on the Assessment of Real Property Taxes on Telecommunications Towers

Because telecommunications towers are fixtures of tower facilities, tower companies can be assessed real property taxes on the towers under section 5020-201's catch-all provision as long as the towers do not fall under section 5020-201's industrial establishment exception.¹³⁴ The court in *Venango County Board of Assessment Appeals* held that

128. *In re Sheetz, Inc.*, 657 A.2d at 1014; *Gore*, 537 A.2d at 915.

129. *Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 569. For example, most leases entered into by the tower companies provide for an original five-year lease of the land, with automatic renewals for four or five more five-year periods. See *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 534-37 (Ct. Com. Pl. Cumberland County 2004).

130. *Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 569.

131. *Id.*

132. See *id.* *supra* notes 121-31 and accompanying text.

133. See 72 PA. STAT. ANN. § 5020-201 (West Supp. 2004); *Dauphin County Bd. of Assessment Appeals*, 869 A.2d at 569; *In re Sheetz, Inc.*, 657 A.2d at 1014; 27 BRIGHT, *supra* note 16, § 15:7. Nevertheless, there is still the possibility that telecommunications towers would not be subject to real property taxation if they fell under section 5020-201's industrial establishment exception. See *infra* Part III.B.

134. See *supra* Part III.A. Section 5020-201's industrial establishment exception provides that "[m]achinery, tools, appliances and other equipment contained in any mill, mine, manufactory or industrial establishment shall not be considered or included as a part of the real estate in determining the value of such mill, mine, manufactory or industrial establishment." 72 PA. STAT. ANN. § 5050-201.

telecommunications towers do not fall under section 5020-201's industrial establishment exception.¹³⁵ The court reasoned that an ordinary man would not think of a telecommunications tower as an industrial establishment, and furthermore, that telecommunications towers are not used in the production of any type of product.¹³⁶

In all likelihood, the court reached the correct result in holding that telecommunications towers do not fall under section 5020-201's industrial establishment exception; however, the court seemed confused in its analysis of the problem.¹³⁷ The court supported its holding by first citing the failure of the towers to be used in the manufacture of some product,¹³⁸ and then citing the fact that tower facilities could not be viewed as industrial establishments under the ordinary man test.¹³⁹ However, the correct analysis would have been to determine first whether tower facilities are industrial establishments under the ordinary man test, and if they are, then to determine whether the towers are used directly in and are integral parts of the manufacturing process.¹⁴⁰ Therefore, it is important to reexamine the court's holding, using the proper analysis, to determine what effect, if any, section 5020-201's industrial establishment exception will have on the taxation of telecommunications towers.

The first step in analyzing whether section 5020-201's industrial establishment exception applies to telecommunications towers is to determine whether the ordinary man would see tower facilities as industrial establishments.¹⁴¹ Traditionally, the definition of industrial establishments has included facilities such as steel mills and power plants, which produce traditional industrial products.¹⁴² However, the definition of industrial establishments has been expanded to include facilities which produce both tangible and intangible non-industrial products, such as newspapers and television programming.¹⁴³ Thus, the

135. *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620, slip op. at 4-5 (Ct. Com. Pl. Venango County Oct. 8, 2003).

136. *Id.*

137. *See id.*; *infra* notes 141-56 and accompanying text.

138. *Venango County Bd. of Assessment Appeals*, Civ. No. 02-620 at 4.

139. *Id.* at 5.

140. *See In re Borough of Aliquippa*, 175 A.2d 856, 861 (Pa. 1961); *City of Pittsburgh v. WICC-TV Corp.*, 321 A.2d 387, 388 (Pa. Commw. Ct. 1974).

141. *City of Pittsburgh*, 321 A.2d at 388.

142. *See, e.g., United States Steel Corp. v. Bd. of Assessment & Revision of Taxes*, 223 A.2d 92, 95 (Pa. 1966) (defining steel mills as industrial establishments); *In re W. Penn Power Co.*, 588 A.2d 997, 999-1000 (Pa. Commw. Ct. 1991) (defining power plants as industrial establishments).

143. *Messenger Publ'g Co. v. Bd. of Prop. Assessment, Appeals, & Review*, 132 A.2d 768, 769 (Pa. Super. Ct. 1957) (holding that a newspaper printing facility is an industrial establishment); *City of Pittsburgh*, 321 A.2d at 388 (holding that a television

only restriction on defining a facility as an industrial establishment is whether an ordinary man would see the facility as an industrial establishment.¹⁴⁴

In *Messenger Publishing Company v. Board of Property Assessment, Appeals, & Review*, the court stated that “the ordinary man would think of a newspaper as an industrial plant, especially if one were to tell him that a laundry or a carpet cleaning company are such for the purpose here being considered.”¹⁴⁵ Then in *City of Pittsburgh v. WIIC-TV Corporation*, the court stated that “the same ordinary man would think of a TV station as an industrial establishment, especially if one were to tell him that a newspaper plant is such for the purpose here being considered.”¹⁴⁶ Thus, the logical inquiry in the case of telecommunications towers would seem to be whether an ordinary man would consider a tower facility an industrial establishment, especially knowing that newspaper printing facilities and television stations are considered industrial establishments.¹⁴⁷

The *Venango County Board of Assessment Appeals* court answered this question in the negative, stating that an ordinary man would not think of a tower facility as an industrial establishment, unlike a newspaper printing facility or television station.¹⁴⁸ In support of this assertion, the court noted that there are no workers at tower facilities.¹⁴⁹ Additionally, the court noted that tower facilities are not used in the creation of any type of product.¹⁵⁰ Instead, the court viewed tower facilities as the mere “middlemen” of cellular communications: the tower facilities simply receive and transmit signals between cellular devices.¹⁵¹ Therefore, under the ordinary man standard, tower facilities would not be considered industrial establishments, and they would not fit under section 5020-201's industrial establishment exception.¹⁵²

The court's application of the ordinary man standard is the most logical application of this standard to tower facilities.¹⁵³ In the most general terms, tower facilities simply operate to receive incoming signals from “Device A,” and then transmit outgoing signals to “Device B,”

station is an industrial establishment).

144. See *City of Pittsburgh*, 321 A.2d at 388; *supra* notes 142-43 and accompanying text.

145. *Messenger Publ'g Co.*, 132 A.2d at 769 (quoting the trial court).

146. *City of Pittsburgh*, 321 A.2d at 388.

147. See *Messenger Publ'g Co.*, 132 A.2d at 769; *City of Pittsburgh*, 321 A.2d at 388.

148. *SBA Towers v. Venango County Bd. of Assessment Appeals*, Civ. No. 02-620, slip op. at 5 (Ct. Com. Pl. Venango County Oct. 8, 2003).

149. *Id.*

150. *Id.* at 4-5.

151. *Id.* at 4.

152. *Id.* at 5.

153. See *id.* at 4-5; *infra* notes 154-56 and accompanying text.

allowing the two devices, and the people using them, to communicate with each other.¹⁵⁴ Thus, tower facilities are not responsible for the creation of any type of product, whether tangible, such as newspapers, or intangible, such as television programming.¹⁵⁵ Furthermore, there are no workers operating these tower facilities.¹⁵⁶ Therefore, it is logical to conclude that an ordinary man would not think of a tower facility as an industrial establishment, precluding the towers contained in, or attached to, these facilities from being exempt from real property taxation under section 5020-201's industrial establishment exception.¹⁵⁷

Of course, courts are not bound by the confines of logic. It is always possible that a court could be persuaded that tower facilities are indeed industrial establishments under the ordinary man standard. However, even if a court would hold that tower facilities are industrial establishments, telecommunications towers would not fall under section 5020-201's industrial establishment exception unless the towers were shown to be "integral parts of the manufacturing process" that are used directly in and solely for the production of the products being produced by the tower facility.¹⁵⁸ Furthermore, this standard is a strict standard in which courts are not likely to grant much leeway.¹⁵⁹ Therefore, courts should find that telecommunications towers do not fall under section 5020-201's industrial establishment exception, and they are therefore subject to real property taxation under section 5020-201.¹⁶⁰

C. *A Better Approach?: New York's Treatment of Telecommunications Equipment for the Purpose of Real Property Taxation*

Like Pennsylvania, New York has considered the question of whether telecommunications equipment, including towers, is subject to

154. See Brain & Tyson, *supra* note 5.

155. Compare *id.* with *Messenger Publ'g Co. v. Bd. of Prop. Assessment, Appeals, & Review*, 132 A.2d 768, 769 (Pa. Super. Ct. 1957), and *City of Pittsburgh v. WIIC-TV Corp.*, 321 A.2d 387, 388 (Pa. Commw. Ct. 1974).

156. See Brain & Tyson, *supra* note 5.

157. See *supra* notes 141-56 and accompanying text.

158. *In re Borough of Aliquippa*, 175 A.2d 856, 861 (Pa. 1961). Of course, the application of these requirements presupposes that a court could identify some product which is being produced by telecommunications towers at tower facilities. See *id.* (requiring the fixtures in question to aid "in manufacturing the products" being produced at the industrial establishment). Speculation as to what this product could be is beyond the scope of this comment.

159. See, e.g., *In re W. Penn Power Co.*, 588 A.2d 997, 999-1000 (Pa. Commw. Ct. 1991) (holding that an electric plant's oil tanks, which were used to store oil before the oil was pumped from the tanks to the boilers, were not fixtures which qualified for section 5020-201's industrial establishment exception because the oil tanks were not an integral and direct part of the electricity manufacturing process).

160. See *supra* notes 141-56 and accompanying text.

real property taxation.¹⁶¹ In *Nextel of New York, Incorporated v. Assessor for Spring Valley*, a court held that all telecommunications equipment, including antennas, cables, and equipment sheds, are subject to real property taxation.¹⁶² While this decision concerning telecommunications equipment is important, what is more important is the reasoning behind the court's decision. Specifically, this decision was not based upon the application of a common law fixtures test,¹⁶³ but rather a provision of New York law that specifically addressed the issue of whether telecommunications equipment is subject to real property taxation.¹⁶⁴

New York, in section 102(12)(i) of the Real Property Tax Law, defines real property to include "all lines, wires, poles, supports and inclosures for electrical conductors upon, above and underground used in connection with the transmission or switching of electromagnetic voice, video and data signals between different entities separated by air, street or other public domain[.]"¹⁶⁵ The court in *Nextel of New York*, after considering the legislative history of section 102(12)(i), reasoned that this definition was written with the specific intention of including telecommunications equipment in the definition of real property.¹⁶⁶ Therefore, the court held that the telecommunications equipment at issue, although technically labeled as antennas, cables, and an equipment shed, were really poles (the antennas), lines (the cables), and inclosures (the shed) within the meaning of section 102(12)(i).¹⁶⁷ The telecommunications equipment thus fell under section 102(12)(i)'s definition of real property, subjecting the equipment to real property taxation.¹⁶⁸

It logically follows from this holding that telecommunications towers, had they been considered, also would have qualified as either poles or supports under section 102(12)(i), making them real property subject to real property taxation.¹⁶⁹ Thus, the benefit of a provision such

161. See, e.g., *Nextel of New York, Inc. v. Assessor for Spring Valley*, 771 N.Y.S.2d 853 (Sup. Ct. 2004).

162. *Id.* at 859-60. The court did not specifically address telecommunications towers in this opinion because the antennas were mounted on a water tower; however, the court's reasoning applies just as forcefully to towers as it does all other telecommunications equipment. See *id.* at 854, 859-60.

163. While the court applied a common law fixtures test at the end of its opinion, it made clear that the primary basis for its holding was the statutory language, which specifically defines telecommunications equipment as real property. See *id.* at 859-61.

164. See *id.*

165. N.Y. REAL PROPERTY TAX LAW § 102(12)(i) (McKinney Supp. 2005).

166. See *Nextel of New York, Inc.*, 771 N.Y.S.2d at 857-60.

167. *Id.* at 859-60.

168. *Id.*

169. See N.Y. REAL PROPERTY TAX LAW § 102(12)(i); *Nextel of New York, Inc.*, 771

as section 102(12)(i) in statutes concerning real property taxation is apparent. Instead of applying a complicated fixtures analysis to determine whether telecommunications towers are real property, one needs only to look at the language of the applicable tax statute to determine that all telecommunications equipment, including towers, is defined as real property subject to real property taxation.¹⁷⁰

IV. Conclusion

The Commonwealth Court and common pleas courts in *Dauphin County Board of Assessment Appeals* and *Cumberland County Board of Assessment Appeals*, respectively, were correct when they ruled that telecommunications towers are subject to real property taxation under section 5020-201 of the Pennsylvania Statutes Annotated.¹⁷¹ Towers fall under the third *Clayton* category of chattels—they are attached to the tower facilities, but can be removed without causing material injury to either the towers or tower facilities.¹⁷² Additionally, application of the *Gore/Sheetz* factors to telecommunications towers reveals that towers are intended to become permanent fixtures of tower facilities.¹⁷³ Therefore, towers, as fixtures, fall under section 5020-201's catch-all provision, providing that "all other real estate not exempt by law from taxation" are subject to real property taxation.¹⁷⁴ Furthermore, towers do not fall under section 5020-201's industrial establishment exception.¹⁷⁵ Thus, telecommunications towers are taxable as real property under Pennsylvania law.¹⁷⁶

However, instead relying on a complicated common law fixtures analysis to support the taxation of telecommunications towers as real property, Pennsylvania's General Assembly should take a cue from New York and revise section 5020-201 to specifically address this issue.¹⁷⁷ If the General Assembly agrees with the courts and would prefer to continue taxing telecommunications towers, it could simply revise

N.Y.S.2d at 859-60.

170. See N.Y. REAL PROPERTY TAX LAW § 102(12)(i); *Nextel of New York, Inc.*, 771 N.Y.S.2d at 859-61. For an example of a complicated common law fixtures analysis, see *supra* Part III.A.

171. See *Shenandoah Mobile Co. v. Dauphin County Bd. of Assessment Appeals*, 869 A.2d 562, 569 (Pa. Commw. Ct. 2005); *Shenandoah Mobile Co. v. Cumberland County Bd. of Assessment Appeals*, 68 Pa. D. & C.4th 529, 548 (Ct. Com. Pl. Cumberland County 2004); *supra* Part III.A.

172. See *supra* Part III.A.1.

173. See *supra* Part III.A.2.

174. 72 PA. STAT. ANN. § 5020-201 (West Supp. 2004); see *supra* Part III.A.

175. See *supra* Part III.B.

176. See *supra* Part III.A-B.

177. See *supra* Part III.C.

section 5020-201 to include the phrase "telecommunications towers" before the catch-all provision. Conversely, if the General Assembly disagrees with the courts and would prefer to protect towers, and tower companies, from real property taxation, it could include a statement after the industrial establishment exception stating, "No telecommunications towers shall be considered real property subject to taxation." Either way, it is time for the General Assembly to settle the debate over whether telecommunications towers are subject to real property taxation.
